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Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In re	)	
	)	
Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment Of Ineligible Claims	)	**Docket No. 19-CRB-0014-RM**

COMMENTS OF MUSIC CLAIMANTS BMI, ASCAP, AND SESAC ON NOTICE OF INQUIRY REGARDING CATEGORIZATION OF CLAIMS FOR CABLE OR SATELLITE ROYALTY FUNDS AND TREATMENT OF INELIGIBLE CLAIMS

The Copyright Royalty Judges (the "Judges") have requested comments pursuant to their notice in the Federal Register of December 30, 2019 regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims. *See* 84 Fed. Reg. 71852 (December 30, 2019) ("Notice of Inquiry" or "Notice").[1] Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), and SESAC Performing Rights, LLC ("SESAC")[2] (collectively, "Music Claimants") submit the following comments (the "Comments") with respect to the rulemaking initiated by the Notice (the "Rulemaking").

I. Summary of Notice of Inquiry

The Notice of Inquiry requests comments on two topics.

[1] The deadline for submission of comments subsequently was extended to March 16, 2019. *See* Order Granting MPA-Represented Program Suppliers, Joint Sports Claimants, and Settling Devotional Claimants' Motion for Extension of Deadline to File Comments, *In re Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims*, Docket No. 19-CRB-0014-RM (January 16, 2020).

[2] SESAC Performing Rights, LLC is formerly SESAC, Inc.

First, the Judges solicit comments as to how the "Allocation Phase" categories should be defined, specifically with respect to the "merit of aggregating the Allocation Phase categories by program type rather than by claimant groups, and whether doing so may result in a distribution of royalties that more accurately reflects the relative value of different programming." 84 Fed. Reg. at 71853. The Judges also inquire as to "the likely impact any particular set of Allocation Phase categories may have on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies." *Id.* at 71853-54. The Judges further seek comment as to "the need for mechanisms and standards to resolve any disputes as to the identity of participants seeking to represent a particular Allocation Phase category in an Allocation Phase proceeding." *Id.* at 71854.

Second, the Judges solicit comments as relating to the so-called "unclaimed funds rule." Specifically, the Judges request comment as to the "identification and treatment of funds that are unclaimed because a filed claim is invalid or not validly represented in a distribution proceeding (invalid claims)." *Id.* The Judges request an "adequate factual record" as to "the necessity and feasibility of proposed approaches to the identification and treatment of invalid claims, and the consonance of their proposed approaches with the establishment of relative value," including "how the treatment of invalid claims may interrelate with the establishment of Allocation Phase categories." *Id.* The Judges further inquire as to "the likely impact any proposed rule for the identification and treatment of ineligible claims may have on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies." *Id.*

II. Interest of Music Claimants

BMI, ASCAP and SESAC are each a performing rights organization ("PRO") and collectively represent millions of composer, lyricist, songwriter, and publisher members and affiliates with combined repertories of tens of millions of copyrighted musical works. On behalf of their members and affiliates, BMI, ASCAP, and SESAC license the public performance rights granted to their respective members and affiliates as copyright owners under Section 106(4) of the Copyright Act (17 U.S.C. § 106(4)). BMI, ASCAP, and SESAC are also each affiliated with approximately ninety foreign performing rights societies around the world and license the repertories of those societies in the United States.

BMI, ASCAP, and SESAC have historically been known as the "Music Claimants" and are referred to herein as such. Music Claimants have been participants in all Cable and Satellite Allocation Phase proceedings under Sections 111 and 119 of the Copyright Act since the inception of each, commencing with the foundational 1978 Cable proceeding before the Copyright Royalty Tribunal ("CRT").

III. Identification of Allocation Phase Categories

Music Claimants respectfully propose that the Judges maintain the claimant groups used in recent Section 111 and 119 royalty distribution proceedings. Although it is expected that the composition of Music Claimants would remain unchanged if Allocation Phase categories were organized by program type, rather than by claimant groups, Music Claimants anticipate that such a change would be highly disruptive to a process that has been in place for over forty years and that a resulting realignment of parties would create an expansive new wave of inter-party disputes in the majority of categories. This shift would result in increases in litigation costs and in the time needed for resolution, and would reduce the likelihood of settlements – all of which would impact

most acutely the parties who contend for a comparatively smaller share of the Section 111 and/or Section 119 royalty funds as compared to the other Allocation Phase parties.

A. The "Music Claimants" Category

It is important first to highlight the unique role played by Music Claimants – and music generally – in Section 111 and 119 proceedings. Most fundamentally, music is not, and has never been treated as, a standalone type of programming. Rather, the musical works represented by Music Claimants are found in *all* types of programming and across all claimant categories. Because music is generally embodied in all categories of programming, it has long been the practice of the Judges and their predecessors to take Music Claimants' share "from the top" – that is, Music Claimants' share is calculated first and deducted from the whole of the fund, and the balance is divided among the remaining parties. As stated by the Judges in the last Cable Allocation Phase proceeding in which Music Claimants' share was litigated to conclusion:

> Music is not a stand-alone category but rather permeates all other program categories. During closing arguments the Judges posed the question whether the Music Claimants' share should be taken off of the top and the Claimants appear in general agreement that it should.

Final Distribution Order, *In re Distribution of the 2004 and 2005 Cable Royalty Funds*, 75 Fed. Reg. 57063, 57075, Docket No. 2007-3 CRB CD 2004-2005 (September 17, 2010) ("2004-05 Ruling").[3]

Equally importantly, no claimant group other than Music Claimants that has participated in prior Cable or Satellite Allocation Phase proceedings and received a share of royalties through

[3] In the 2010-13 Cable and Satellite Allocation Phase proceedings, Music Claimants settled their share of royalties with the remaining Allocation Phase parties. *See* Joint Notice of Settlement and Motion for Distribution Regarding Cable Royalty Claims of Music Claimants, *In re Distribution of Cable Royalty Funds*, Docket No. 14-CRB-0010-CD (2010-13) (December 15, 2016); Joint Notice of Settlement and Motion for Distribution Regarding Satellite Royalty Claims of Music Claimants, *In re Distribution of Satellite Royalty Funds*, Docket No. 14-CRB-0011-SD (2010-13) (December 15, 2016). The Judges granted these motions in orders dated August 11, 2017.

partial or final distributions has ever claimed the right to collect and distribute royalties for the public performance of copyrighted musical works embodied in programs that are distantly retransmitted. Indeed, the PROs that comprise the Music Claimants are specifically identified in the Copyright Act as associations that license the public performance of musical works. *See* 17 U.S.C. § 101 ("A 'performing rights society' is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.").

Against this background, the definition and composition of Music Claimants ought not change whether the Judges elect to adopt category definitions aggregated by "claimant groups" or "program types." In this regard, in the 2014-17 Cable and Satellite Allocation Phase proceedings, Music Claimants joined several other Allocation Phase parties in proposing the following definition of Music Claimants:

> **"Music Claimants."** Musical works performed during programs that are in the following categories: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants.

Joint Comments of 2014-17 Cable Participants on Allocation Phase Claimant Category Definitions, Appendix A thereto, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-17) (April 19, 2019) ("2014-17 Joint Comments"). Although this definition contains a typographical error (in that National Public Radio was inadvertently omitted from the list of all Allocation Phase parties*; see* discussion in Section V, *infra*), this definition is not different in substance from the definition proposed by Program Suppliers:

> **"Music Claimants."** Musical works *that fall within the program types for* the following *claimant groups*: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants.

Program Suppliers' Brief Regarding Proposed Claimant Group Definitions, Appendix A thereto, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-17) (April 19, 2019) ("2014-17 Program Suppliers Comments") (emphasis added). The edits proposed by Program Suppliers are directed only to the verbiage used in describing the other Allocation Phase categories, not to the composition of the Music Claimants category itself.

It is uncontroverted that Music Claimants are comprised of representatives of owners of copyrighted musical works embodied in programs that are distantly retransmitted – which, as a practical matter, consists of the PROs. As a result, it does not appear that any party has advocated for a substantive change in the manner in which Music Claimants are defined – or in the manner in which musical works are handled generally in Allocation Phase proceedings.[4]

In view of the foregoing, to the extent that the Judges seek input as to whether defining categories by claimant group as opposed to program type may "result in a distribution of royalties that more accurately reflects the relative value of different programming," Notice at 71853, Music Claimants submit that their share should not be impacted and that it continue to be "taken off the top" because musical works embodied in programs that are distantly retransmitted will continue to span all programming and all categories of programming.[5] Although Music Claimants have been defined as "musical works" cutting across all other programming types, as a practical matter

[4] *See* Notice of Participants and Order for Preliminary Action to Address Categories of Claims, *In re Distribution of Cable Royalty Funds*, Docket No. 16-CRB-0009-CD (2014-17) (March 20, 2019); Notice of Participants and Order for Preliminary Action to Address Categories of Claims, *In re Distribution of Satellite Royalty Funds*, Docket No. 16-CRB-0010 SD (2014-17) (March 20, 2019).

[5] Music Claimants express no opinion to the extent directed that this Notice concerns other Allocation Phase categories or programming types other than music.

the category consists of the licensors of the rights in those works - *i.e.*, the PROs - such that the two are one and the same.[6]

B. Impact of Changes in Category Definitions

Notwithstanding the Music Claimants' position that the category-identification issue should not directly impact them, Music Claimants urge the Judges to refrain from wide-scale change to category definitions. The composition and alignment of parties in Section 111 and 119 proceedings have remained unchanged for many years, and many of these parties have been represented by the same counsel for decades. This has resulted, over time, in a certain flow and predictability in the manner in which these proceedings are negotiated and often settled, which translates to efficiencies that inure to the benefit of all parties and to the proceedings before the Judges and the Judges' predecessors.

Changes to the identification of Allocation Phase parties will likely significantly disrupt the orderly and foreseeable course of these proceedings. Although the full impact of any changes is difficult to predict, a near-certain result of realignment will be to lose decades of efficiency and increase the time and cost necessary to litigate these proceedings. Settlement will also be impeded as redefined and realigned parties are no longer able to base proposals on prior settlement shares and may be more hesitant to view past results as predictive of future shares. This change in landscape will likely delay any final determinations of royalty shares in Allocation Phase parties due to anticipated new inter-category disputes and, by extension, delay the ultimate receipt of royalties to all parties. Overall, the impact of such disruption would be felt most

[6] Indeed, as PRO Music Claimants necessarily file claims with respect to musical works in all types of programming, Music Claimants submit that it would be difficult, if not impossible, to devise any other allocation process for claimants of retransmissions of musical works. Any separate claims filed by entities other than the PRO Music Claimants (*e.g.*, a copyright owner not affiliated with any PRO) would still encompass a claim for the retransmission of musical works, and be the subject, if anything, of a subsequent Distribution Phase proceeding.

acutely by the parties with a comparatively smaller stake, and Music Claimants ask that the Judges be mindful of these effects.

In 2008, when faced with a request to redefine the traditional categories in Section 111 proceedings, the Judges rightly found that retaining the longstanding categories was "in the interests of promoting certainty and future settlements." *See* Order Granting Partial Distribution of 2003 Cable Royalty Fund at 3, Docket No. 2005-4 CRB CD 2003 (January 23, 2008). This reasoning applies with equal and perhaps even greater force today.[7]

C. Disputes Regarding Identity of Participants

The Judges also seek comment as to "the need for mechanisms and standards to resolve any disputes as to the identity of participants seeking to represent a particular Allocation Phase category in an Allocation Phase proceeding." 84 Fed. Reg. at 71854. Although Music Claimants will not purport to urge the adoption of procedures applicable to other Allocation Phase categories and/or programming types, Music Claimants again emphasize that they are situated differently from other parties to royalty distribution proceedings. As such, any "mechanisms and standards" accepted by the Judges should take into account (a) the fact that the identity and authority of BMI, ASCAP, and SESAC to represent the musical works within these proceedings is well established and has never been challenged in a 40+-year history; (b) that such a requirement for Music Claimants would, accordingly, pose no benefit and be unnecessary; and (c) that a rule permitting a participant to delve into the identity of the millions of affiliates and works represented by Music Claimants would be extraordinarily burdensome to Music Claimants.

[7] To the extent the Judges believe a modification to the allocation categories of audiovisual work claims is warranted, Music Claimants submit that, due to the expense already invested in analyzing and preparing for the 2014-2017 Cable and Satellite proceedings, any such modification must be made prospectively only.

The Judges have previously recognized that Music is "unique" in comparison to the other claimant groups in that they "collectively represent[] more than one million claimants," as a result of which the Judges previously exempted Music Claimants from having to list all members and affiliates when submitting their annual claims to Section 111 and 119 royalties. *See* Order Exempting Performing Rights Organizations from Requirement to Identify Individual Claimants, *In re Distribution of Cable Royalty Funds* and *In re Distribution of Satellite Royalty Funds*, Docket Nos. 14-CRB-0007 CD (2010-12) & 14-CRB-0008 SD (2010-12) (January 16, 2015) at 2 ("January 16 Order"). *See also* 37 C.F.R. § 360.4(b)(2)(i) ("*With the exception of joint claims filed by a performing rights society on behalf of its members*, a list including the full legal name, address, and email address of each copyright owner whose claim(s) are included in the joint claim.") (emphasis added).[8] Likewise, as mentioned previously, the status of the three parties that have historically comprised Music Claimants as exemplar "performing rights organizations" authorized to represent their members is codified in the Copyright Act. 17 U.S.C. § 101.

Music Claimants' concerns are amplified by a discovery dispute that arose in the 2010-13 Cable and Satellite royalty proceedings in which Program Suppliers sought to take discovery to "verify" Music Claimants' authority to represent each of their then-over one million members – even though Program Suppliers asserted no claim in the Music Claimants category and specified no reason to doubt the PROs' representation. Program Suppliers' discovery request prompted a motion to quash by Music Claimants, as well as supplemental briefing supported by detailed declarations submitted on behalf of each of BMI, ASCAP, and SESAC detailing the burden that

[8] In the recent rulemaking to determine the procedural regulations for the electronic filing of claims in eCRB, the Judges established regulations that matched the prior, longstanding regulations governing content of claims and continuing Music Claimants' exemption to the requirement of identifying all claimants represented by joint claims submitted by each of the PROs. *See* Final Rule, Docket No. 17-CRB-0012-RM, *Procedural Regulations for the Copyright Royalty Board Regarding Electronic Filing of Claims*, 82 Fed. Reg. 27016, 27019 (June 13, 2017).

would be imposed on the PROs by these requests. *See* Music Claimants' Motion to Quash Discovery, *In re* Distribution of Cable Royalty Funds and *In re* Distribution of Satellite Royalty Funds, Docket No. 14-CRB-0007 CD (2010-13) & 14-CRB-0008 SD (2010-13) (April 1, 2016); Music Claimants' Responsive Brief Pursuant to Order Dated April 12, 2016, *In re Distribution of Cable Royalty Funds* and *In re Distribution of Satellite Royalty Funds*, Docket Nos. 14-CRB-0007 CD (2010-13) & 14-CRB-0008 SD (2010-13) (May 18, 2016) (collectively "2010-13 Music Discovery Briefing"). The statements in the declarations of 2016 remain true today, as reflected by the Declarations attached hereto. *See* Exhibits A-C to these Comments. If anything, the burden has only increased as more and more members and affiliates join the PROs.[9]

Accordingly, any "mechanisms and standards" adopted by the Judges should recognize that a dispute as to the identity of participants must be founded in a legitimate dispute and not merely as leverage against relatively smaller stakeholders. At least as to Music Claimants, this means that attempts to take discovery or otherwise seek verification as to the authority, validity, or identity of the claimants or works represented by the PROs within Music Claimants should (1) not be permitted by parties that are not seeking royalties within the Music Claimants category (as identified in a petition to participate or a claim timely filed with the Copyright Royalty Board), (2) require as a precondition a predicate showing as to the good faith basis of the purported dispute, and (3) take into account the burdens faced by the responding party, including quashing of the request where an appropriate showing is made. *See* 2010-13 Music Discovery Briefing and exhibits thereto; Exhibits A-C hereto.

[9] To the extent that additional claims with respect to the retransmission of musical works are filed by copyright owners (or their representatives) other than the traditional Music Claimants, those claims are still made with respect to the retransmission of musical works and would be included in the Music Claimants category in the Allocation Phase. Any verification of those claims would necessarily be the subject matter of a Distribution Phase proceeding, and handled through traditional litigation and settlement practices.

IV. Identification of Invalid Claims

Turning to the second issue on which the Judges invite comment, Music Claimants propose that funds attributable to unfiled or invalid claims continue to be distributed intra-category, consistent with the original CRT ruling that "royalty fees will be allocated to categories of claimants as if all eligible claimants in each category had filed valid claims." Notice of Final Determination, 1978 Cable Royalty Distribution Determination, 45 Fed. Reg. 63026, 63042 (Sept. 23, 1980) (the "1978 Ruling").

The reasons for Music Claimants' position are more practical than theoretical. First, determining the relative value of distantly retransmitted musical works should not be impacted by whether funds attributable to invalid or unfiled claims are distributed intra-category or inter-category. Second, if the Judges shift to inter-category distribution of such unclaimed or otherwise invalid funds, it stands to impose additional costs and burdens on all parties participating in Allocation Phase proceedings, including Music Claimants.

The Section 111 and Section 119 statutory licenses are blanket in nature and not dependent on usage of any specific programs or works. In this manner, they are similar to the PROs' blanket licenses, which authorize performances of all the works in the respective PRO's repertory under a single license. *See* 2010-13 Music Discovery Briefing; Exhibits A-C hereto. These blanket licenses give unlimited right to perform the applicable PRO's repertory regardless of whether and the extent to which specific works in the repertory are actually performed by the licensee, much as the statutory licenses allow retransmissions of all signals for which a fee is paid regardless of content. *Id*. Distributions from a PRO of blanket license fees to any particular individual copyright owner with respect to any specific transmitted musical work is an internal PRO distribution issue, and not relevant to the blanket license itself. *Id*. Likewise, the transmission pursuant to the Section 111 and Section 119 statutory licenses of any specific

musical work within (or outside) specific repertories of the PRO Music Claimants does not impact the ultimate value of the overall music share. The ownership of any specific retransmitted musical work is an "internal" intra-category distribution matter that is only relevant, if at all, during the Distribution Phase.

Additionally, permitting inter-category distribution could dramatically expand the scope of such proceedings. As it stands, parties such as Music Claimants simply seek to prove their own share, *i.e.*, the overall value of *all* musical works within *all* retransmitted programming on a blanket basis, with any other controversy limited to those parties who claim to own musical works (in a Distribution Phase proceeding). However, dividing among all other party categories the unrepresented or invalid claims within a given party category incentivizes all parties to litigate the validity of each claim filed by, or on behalf of, each copyright owner with respect to every retransmitted copyrighted work. By demonstrating that a party category – however defined – represents less than all of the works covered by the work type within that category, a door opens for all other groups effectively to lay claim on the "missing" share. No longer would parties' claims be limited to those works within their respective categories, as in the Distribution Phase, rather every Allocation Phase party would be incentivized to cannibalize the unrepresented component of every other Allocation Phase category, potentially converting already costly and time-consuming proceedings into a veritable free for all. This would effectively abolish the traditional two-phase process that has been the foundation of every Section 111 and Section 119 proceeding.

The free-for-all approach may be construed by the other parties as subjecting Music Claimants to the demands of every other Allocation Phase party – not because they claim ownership of any distantly retransmitted musical works, but because they wish to prod the scope of the PROs' representation, aiming to find defects that may enable recovery of some small

fraction of the value of a purportedly invalid claim or unrepresented musical work. To be sure, such amounts would be *de minimis*, given the vast number of musical works represented by the PROs and the relatively small percentage of Allocation Phase royalties historically received by Music Claimants. No showing has ever been made in Section 111 and 119 proceedings to date, or even seriously argued, that there is any appreciable volume of distantly-retransmitted musical works not represented by Music Claimants. And, as discussed above, any individual invalid claim would not affect the value of the license (*i.e.*, Music Claimants' overall share) with respect to the retransmission of all musical works on a blanket basis. Yet the cost of parrying such efforts and addressing the accompanying discovery demands would add new and substantial burdens and expenses to a small party in an already-costly proceeding. This concern once again harkens to the burden issues faced by Music Claimants in the 2010-13 Cable Allocation Phase proceeding, which foreseeably would be encountered again in all future Cable and Satellite royalty distribution proceedings. *See* 2010-13 Music Discovery Briefing; Exhibits A-C hereto. Notably, the only difference is that instead of just one party's discovery demands, as in the 2010-13 proceedings, the resulting burden issues could easily be multiplied, were all parties to make similar demands on Music Claimants.

It is no answer to this concern to state that Music Claimants too would have the right to make similar demands of other parties, seeking information as to the extent of unfiled claims within each party's category and the existence and scope of any potentially invalid claims therein. Even if such a corresponding right would exist in this new paradigm, it is a right that Music Claimants do not seek. Music Claimants have never previously sought recovery of funds attributed to distantly retransmitted works other than musical works. Even if Music Claimants were to recover funds from an actual or effective pool of invalid or unclaimed funds for non-musical works, that recovery would be offset and perhaps superseded by the cost, burden, and

resulting delays in obtaining such distribution. Thus, even if there is an equitable argument to be made for inter-category rather than intra-category distribution of invalid claims, Music Claimants strongly suspect that the additional cost, burden, and attendant delays of resolving such issues in an inter-category basis would vastly outstrip any benefit.[10]Although the 1978 Ruling is not binding on the Judges, for four decades it has served to cabin the scope of disputes regarding unclaimed or invalid claims. This rule has been a cornerstone of the settlement process. Reversing this approach would partially eviscerate for copyright owners the efficiencies of a compulsory blanket license, upend decades of precedent, unduly lengthen these already-long proceedings, and impose significant financial hardships on the parties – especially Music Claimants. *See* Exhibits A-C.

V. Proposed Regulatory Language and/or Further Orders

In view of the foregoing comments, Music Claimants do not propose any new regulatory language amending 37 C.F.R. Part 351. Music Claimants do, however, request that its category definition be retained for the ongoing Cable and Satellite 2014-17 proceedings and all future Section 111 and 119 royalty distribution proceedings in a manner comparable to prior definitions and with one minor modification.

In the 2014-17 Joint Comments, the parties thereto proposed the following definition of Music Claimants:

> **"Music Claimants."** Musical works performed during programs that are in the following categories: Program Suppliers, Joint Sports Claimants, Commercial

[10] Notably, the only Allocation Phase party that appears to be clamoring for a change to the approach taken in the 1978 Ruling is MPA-Represented Program Suppliers, based on their positon expressed in the 2014-17 Cable and Satellite distribution proceedings. *See* 2014-17 Program Suppliers Comments. Yet in those comments, Program Suppliers make no fairness argument as to inter-party versus intra-party distribution of unfiled or invalid claims and certainly make no assertion that such an approach would be more efficient. *See id.* Rather, it appears that the entirety of Program Suppliers' rationale is that such an approach is more consonant with their particular economic analysis as to relative value and would thus justify their related discovery demands. Music Claimants urge that the preferred valuation theories of a single party ought not subject other parties – particularly those, like Music Claimants, with whom they have no distribution disputes – to the resulting burdens, costs, and delays.

Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants.

For consistency to identify all parties that have historically been parties to Allocation Phase proceedings, Music Claimants propose the following minor modification to the foregoing definition, as shown in italics:

> **"Music Claimants."** Musical works performed during programs that are in the following categories: Program Suppliers, Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Devotional Claimants, Canadian Claimants*, National Public Radio*.

The wording of this modified definition may, of course, need be adjusted to account for other changes the Judges make to the identification of other categories. Alternatively, Music Claimants might be defined more simply as "musical works performed during programs *within any other Allocation Phase categories."*

VI. Conclusion

Music Claimants commend the Judges for undertaking this Rulemaking and their attention to the importance of formally establishing categories applicable to the distribution of Cable and Satellite royalties and to addressing the unclaimed funds rule. Music Claimants intend to fully participate in this Rulemaking and would be pleased to discuss any of these comments in greater detail with the Judges.

Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

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Dated: March 16, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2020, a copy of the foregoing Comments of Music Claimants BMI, ASCAP, and SESAC on Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel and *pro se* participants who are registered to use eCRB. *See* 37 C.F.R. § 303.6(h)(1).

/s/ Jennifer T. Criss
Jennifer T. Criss

EXHIBIT A

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In re	)	
	)	**Docket No. 19-CRB-0014-RM**
Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment Of Ineligible Claims	)	

DECLARATION OF HOPE M. LLOYD

I, Hope M. Lloyd, hereby declare as follows, based on my personal knowledge.

1. I am over 18 years of age and am employed as Assistant Vice President, Legal, Broadcast Music, Inc. ("BMI"). My office is located at 7 World Trade Center, 250 Greenwich Street, New York, NY 10007. I am authorized to submit this affidavit on behalf of BMI in support of the Comments of Music Claimants BMI, ASCAP and SESAC on the Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims (the "Music Comments").

2. BMI, ASCAP and SESAC are historically known as the "Music Claimants" in cable and satellite royalty distribution proceedings before the Copyright Royalty Judges (the "Judges"). Music Claimants are the traditional claimants to the distribution of cable and satellite royalty funds in the Music Claimants category. BMI, ASCAP, and SESAC are performing rights licensing organizations ("PROs") recognized by Section 101 of the Copyright Act that license the public performance rights to the music in their respective repertoires under Section 106(4) of the Copyright Act. BMI represents over one million composer, lyricist, songwriter, and publisher affiliates, with a repertoire of millions of copyrighted musical works.

3. In Section IV of the Music Comments ("Identification of Invalid Claims"), certain burdens are set forth and explained that are anticipated to result should the Judges take certain actions in connection with the above-captioned Notice of Inquiry. In this regard, attached to this

Declaration as Exhibit 1 is a copy of a declaration of Joseph J. DiMona of BMI, executed in May 2016. I have personal knowledge regarding the subject matter and statements concerning the burdens that would be imposed on BMI if the Judges were to require the PROs to prove each and every performance of an affiliate's musical works as set forth in Mr. DiMona's declaration, and those statements remain true today.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of March, 2020, in Glen Ridge, New Jersey.

Hope M. Lloyd

EXHIBIT 1

In re **Distribution of Cable Royalty Funds**	**Consolidated Proceeding** **Docket No. 14-CRB-0010-CD (2010-13)**
In re **Distribution of Satellite Royalty Funds**	**Consolidated Proceeding** **Docket No. 14-CRB-0011 SD (2010-13)**

DECLARATION OF JOSEPH J. DIMONA

I, Joseph J. DiMona, hereby declare as follows, based on my personal knowledge.

1. I am over 18 years of age and am employed as Vice President, Legal Affairs, Broadcast Music, Inc. ("BMI"). My office is located at 7 World Trade Center, 250 Greenwich Street, New York, NY 10007. I am authorized to submit this affidavit on behalf of BMI in support of BMI's opposition to certain discovery requests that have been served on BMI in the above-captioned proceedings.

2. BMI, ASCAP and SESAC are known as the "Music Claimants" in the above-captioned proceeding. BMI, ASCAP, and SESAC are performing rights licensing organizations ("PROs") recognized by Section 101 of the Copyright Act that license the public performance rights to the music in their respective repertoires under Section 106(4) of the Copyright Act.

3. Music Claimants collectively represent over one million composer, lyricist, songwriter, and publisher members and affiliates with combined repertoires of millions of copyrighted musical works. Music Claimants are the traditional claimants to the distribution of cable royalty funds in the Music Claimant category.

4. For over 75 years, BMI has operated as a collective licensing service to music users on behalf of its members, and is a global leader in music rights management. BMI represents the public performance rights in more than 10.5 million musical works created and owned by more than 700,000 songwriters, composers, and music publishers. BMI is affiliated with over 95 foreign performing rights societies around the world through reciprocal licensing arrangements that permit BMI to licenses the public performing

rights of works of those societies in the United States and that allow the foreign societies to license BMI works in their respective territories.

5. All of BMI's composer, lyricist, songwriter, and publisher members and affiliates are eligible to receive royalties for the distant retransmission of musical works when their works are contained in programming in distant signal cable and satellite broadcast channels.

6. BMI (and other PROs) are situated differently than other claimants to Section 111 and 119 royalties, in view of the nature and size of its repertoire and the nature of musical works as an element contained within the programing of all other Phase I claimants. As explained below, provision of the discovery sought by MPAA in these proceedings would impose an onerous burden on BMI, compliance with which foreseeably would interrupt BMI's business with potentially damaging effect.

7. BMI maintains a searchable database of its 700,000 members' musical work(s). This database can be found at www.bmi.com. BMI's repertoire is constantly in flux as new works come into BMI's repertoire upon creation, and as new members join BMI or existing members leave BMI to join another PRO or to license their music independently. BMI pays its members for the distant retransmission of a musical work that occurred during a given year using a proxy of airplay data from a selection of distantly retransmitted stations.

8. Unlike the other Phase I claimant categories, which can be represented by ad hoc groups formed expressly – and only – for the purpose of collecting Section 111 and 119 royalties, the PROs represent their entire repertoires of affiliated works to collect royalties from a wide array of public performance sources (*e.g.*, radio, television, live concerts, cable, Internet, background music, skating rinks, retail stores, and hotels).

9. The regulations that govern this proceeding expressly recognize BMI's right to rely on its standard membership agreements to represent its members for section 111 and 119 royalties. *See* 37 C.F.R. §§ 360.3(b)(2)(ii), 360.12(b)(2)(ii). To join BMI for general purposes, each member signs an affiliation agreement that is approximately 10 pages long. The form BMI writer and publisher affiliation agreements are available at

www.bmi.com/creators. Agreements can automatically renew unless terminated; some existing agreements were signed years ago using forms that may differ from the current form agreements. Additionally, given the varying years and decades in which such agreements were entered into, they are stored in a variety of ways and in multiple locations, and may not be readily accessible from a single source.

10. To the extent MPAA's request for "documents supporting your authority to represent each claimant" is construed to require production of all such agreements, this would impose an unprecedented burden on BMI. To locate and produce the affiliation agreements of 700,000 members in discovery would require substantial time and the devotion of substantial resources. Further, each agreement would need to be redacted to maintain the confidentiality of personal information of the individual rights holder, adding substantial time and manpower to prepare such redactions to the already-significant burden of location and production. Employees would need to be redirected from their ordinary functions, foreseeably resulting in internal backlogs and obstacles to meeting the needs of BMI's members. None of this could have been anticipated by BMI and advance preparations made, as there is no controversy with the other PROs in these proceedings. Moreover, millions of dollars of distant signal cable and satellite royalties have been distributed annually by the Judges and their predecessors over the past 35 years to BMI without the requirement for such "evidence" of entitlement.

11. Additional unreasonable burdens sought to be imposed by MPAA's demands for "program identity information for each claimant" and identity of "each represented claimant's claim against each year's royalty fund." This information is not maintained in a readily accessible manner. BMI makes royalty distributions in the ordinary course of business from a wide variety of sources, including for music aired in local television station and network broadcasts. BMI also makes an quarterly distribution of royalties to affiliates whose works appear on a subset of television stations that were carried by cable systems and satellite carriers as distant signals. The total number of affiliates receiving such distributions in the 2010-13 years is approximately 16,000 per year. BMI's television distributions are derived using a variety of sources, including a proprietary database of cue sheets that identify the musical works in a given television program and a

third-party data source that identifies which programs air on which television stations during the course of a year. This information is generated on a quarterly basis.

12. MPAA's initial discovery demands would require BMI to identify the BMI-represented music in every single program transmitted on every distant signal carried by thousands of cable operators or by satellite carriers for every day of the year for each of the years 2010-2013. BMI estimates that there are tens of thousands of hours of such programs each year. Generally, given the relatively small amount of royalties generated by the Section 111 and 119 statutory licenses and the vast amount of data, this is not information that BMI assembles and maintains in the ordinary course of business.

13. Importantly, any given musical work can have multiple songwriters, composers, and publishers; these co-writers can be and often are each affiliated with a different PRO. Moreover, individual members of different PROs can have separate musical works in the same distantly-retransmitted program.

14. MPAA's request for discovery fails to account for the nature of how BMI operates and licenses its catalog. BMI gives users of music such as television stations a blanket license giving unlimited access to its entire repertoire for a fee. The cable and satellite statutory licenses are also a form of blanket license. All BMI works are therefore eligible to be licensed under Sections 111 and 119, whether they are performed or not. BMI makes decisions on how to distribute royalties each year using cost effective proxies.

15. Moreover, BMI operates on a non-profit-making basis and distributes all royalties collected each year from all sources to its affiliates, less overhead and reasonable reserves. All fees, less BMI's operating expenses, are paid to its affiliated songwriters, composers, and music publishers. Therefore, the expenses that MPAA proposes to impose on BMI results in a loss to affiliates, many of whom may be dependent on such royalties.

16. Because there is no controversy within the Music category, Music has opted out of the current Preliminary Claims Issue proceedings, as permitted by the Judges' March 14 orders, and ought not be required to produce any discovery at this stage of the proceeding. However, BMI has offered to explain to the MPAA its licensing and royalty

practices in general, and has offered to give MPAA copies of form agreements and (on an outside counsel only basis) the lists of the BMI members who received distributions of distant signal royalties from BMI in each year from 2010-13. BMI does not as a general rule produce information on the earnings of BMI's individual members, and regards that information as confidential. Providing further information, such as the identity of the music cues that were the basis for royalty payments, is possible in a summarized form; however, the information is not relevant to Phase I of this proceeding (or Phase II, since the PROs have settled their disputes). The additional information sought by MPAA is particularly burdensome and/or requires access to third party data sources and is objectionable for the reasons indicated. Undertaking additional research to comply or attempt to comply with MPAA's document requests will impose undue burdens on BMI's staff and take them away from their jobs of producing quarterly distributions, further delaying and reducing royalties to BMI's individual songwriter, composer, and publisher members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of May, 2016, in New York, New York.

Joseph J. DiMona

EXHIBIT B

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In re	)	
	)	**Docket No. 19-CRB-0014-RM**
Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment Of Ineligible Claims	)	

DECLARATION OF SAMUEL MOSENKIS

I, Samuel Mosenkis, hereby declare under the penalty of perjury that the following statement is true and correct, and based on my personal knowledge.

1. I am over 18 years of age and am employed as Vice President of Business and Legal Affairs at the American Society of Composers, Authors and Publishers ("ASCAP"). My office is located at 250 West 57th Street, New York, New York 10107. I am authorized to submit this affidavit on behalf of ASCAP in support of the Comments of Music Claimants BMI, ASCAP and SESAC on the Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims (the "Music Comments").

2. ASCAP, BMI and SESAC are historically known as the "Music Claimants" in Section 111 cable and Section 119 satellite royalty distribution proceedings before the Copyright Royalty Judges (the "Judges"). Music Claimants are the traditional sole claimants to the distribution of cable and satellite royalty funds in the Music Claimants category, *i.e.* those funds attributed to the public performance of copyrighted musical works contained throughout television programs airing on retransmitted broadcast signals. ASCAP, BMI and SESAC are each performing rights licensing organizations ("PROs"), as recognized by Section 101 of the Copyright Act (Title 17 of the U.S. Code), that license the public performances of the musical works in their respective repertories pursuant to Section 106(4) of the Copyright Act.

3. ASCAP represents over 750,000 composer, lyricist, songwriter, and publisher members, with a repertory of millions of copyrighted musical works. On behalf of its members, ASCAP issues public performance licenses to music users, including television broadcast stations, cable operators and satellite carriers. The licenses that ASCAP issues are "blanket" in nature, meaning that an ASCAP licensee obtains the right under a single license to perform any or all of the entire ASCAP repertory.

4. Each of the Music Claimants files a single claim in Section 111 and Section 119 proceedings that covers all the musical works in the PRO's repertory contained in retransmitted local television programming. The Music Comments discuss the tremendous burdens that would be imposed on Music Claimants should any or all of the Music Claimants be required to validate all the many thousands of musical works that encompass their respective claims filed in Section 111 and Section 119 proceedings, whether with respect to defining the Music Claimant category or in connection with the handling of invalid claims. In this regard, attached to this Declaration as **Exhibit 1** is a copy of my declaration dated May 18, 2016, submitted in Consolidated Proceeding, Docket No. 14-CRB-0010-CD (2010-13), that outlines the burdens and expenses that ASCAP would bear should it be required to prove each and every performance of ASCAP's members' musical works airing on broadcast television stations that were retransmitted by cable systems and satellite carriers ("2016 Declaration"). The statements made in the 2016 Declaration remain true today and I hereby reaffirm such statements.[1]

[1] As ASCAP's membership and repertory have grown since 2016, the burdens and expenses described in the 2016 Declaration would likely be currently higher.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of March, 2020, in New York, New York.

Samuel Mosenkis

EXHIBIT 1

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In re	
DISTRIBUTION OF CABLE ROYALTY FUNDS	**CONSOLIDATED PROCEEDING Docket No. 14-CRB-0010-CD (2010-13)**

DECLARATION OF SAMUEL MOSENKIS

I, Samuel Mosenkis, hereby declare, under penalty of perjury that the following statement is true and correct, and of my personal knowledge.

1. I am over 18 years of age and am employed as Vice President, Business and Legal Affairs, at the American Society of Composers, Authors and Publishers ("ASCAP"), and am authorized to submit this affidavit on behalf of ASCAP. My office is located at 1900 Broadway, One Lincoln Plaza, New York, NY 10025.

2. In connection with the above-captioned proceeding, counsel for the MPAA served on the Music Claimants, comprised in this proceeding of the three main U.S. performing rights organizations ("PROs"), including ASCAP, document requests (the "Requests") purportedly related to "Claims Validity" and "Categorization," notwithstanding that there exist no conflicts within the Music Claimants category regarding the authority, identity and/or categorization of claims.

3. The Requests appear to require ASCAP to: (i) identify *every* musical work written and/or owned by an ASCAP member that was performed during every local television program[1]

[1] As used herein, "local television broadcasts," "local television performances" and similar references, refer to all programming broadcast by full-power FCC-licensed television stations other than network programming supplied by the ABC, NBC, and CBS networks.

that aired on any of the hundreds of local television stations that were distantly retransmitted during the four year period from 2010-2013; (ii) identify the specific ASCAP members with interests in each of those identified musical works; and (iii) provide membership agreements for each of those identified members. Literal compliance with the Requests is not readily possible, and any endeavor to do so would impose on ASCAP an enormous burden.

4. By way of background, ASCAP represents more than 575,000 songwriter, lyricist, and music-publisher members. Each ASCAP member grants to ASCAP a non-exclusive right to license the performing rights in that member's copyrighted musical compositions. On behalf of its members, ASCAP licenses nondramatic public performances of its members' musical works, collects license fees associated with those performances, and distributes royalties to its members, less ASCAP's operating expenses.

5. In distributing royalties to its members, ASCAP is guided by a "follow the dollar" approach. That is, the money collected from licensees in a particular medium (for instance, local television) is paid to ASCAP's members for performance of their works in that medium.

6. Following this principle, in order to distribute royalties collected from the primary transmission of local television station programming and its retransmission by cable operators and satellite carriers, ASCAP must collect information regarding such local television performances.

7. Practically speaking, to identify performances by way of local television transmissions and cable and satellite retransmissions -- and calculate associated royalties -- ASCAP must collect multiple sets of data.

8. First, ASCAP collects data that identifies every program (and episode; hereinafter, references to "program" refer to separate, unique program episodes) that airs on every U.S. local broadcast television station.

9. Second, in an attempt to identify the works on each such program, ASCAP relies substantially on "cue sheets" provided to it by the program producers or broadcasters.[2] Each such cue sheet typically contains between 10 and 30 separate musical work cues, whether a feature song, a program theme or a nondescript background music cue (sometimes titled simply "[name of program] cue"]. While cue sheet data supplied to ASCAP generally contains the name of the individual work and its associated writer and publisher, ASCAP also relies upon its own song information database to connect performed works with the associated ASCAP members.

10. Using its unique distribution rules, mathematical and statistical formulae, and operational processes, ASCAP utilizes this program, cue sheet and musical work information to make distributions to its members of royalties collected for such local television performances.

11. While ASCAP receives cue sheet data for a substantial portion of the programs aired on local television, it does not receive cue sheets (or other music performance data) for *all* such programs. As a result, to the extent the Requests are read to require ASCAP to identify with specificity *every* work that was distantly retransmitted in 2010-2013, ASCAP does not have possession, custody, or control of all data necessary to comply with such a request.[3]

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[2] Cue sheets generally are created by the producer of a television program and include the producer's attempt to identify, among other things, the title of each musical work performed, the authors, composers, and music publishers for each work, and their respective PRO.

[3] It should be noted that ASCAP maintains an extensive proprietary electronic database with detailed information regarding, among other things, song titles, writers, and publishers of the more than 10 million works in the ASCAP repertory. The works actually performed on local television

12. Moreover, while ASCAP does maintain available data regarding performances on local television, including cue sheet data, that data is not maintained in a manner that would allow ASCAP to readily tie together program, station, work, author, and publisher data into a single report. Given the millions of performances potentially at issue, ASCAP estimates that the formulation and production of any such report would require the investment of many hundreds of employee hours.

13. As described, ASCAP does manipulate such data in order to make royalty distributions on account of performances of music on local television stations. Accordingly, ASCAP maintains in the normal course of its business operations data regarding which of its members have received royalty distributions resulting from performances of music on local television in any given distribution cycle.[4] According to ASCAP's initial calculations, as many as 40,000-plus unique members receive such royalty distributions in any given year. ASCAP has written membership agreements with each of those members that authorize ASCAP to license the nondramatic public performance rights at issue in this proceeding. ASCAP conservatively estimates that it would take more than 1,000 employee hours to locate, print, review, redact and produce those individual agreements. This undue burden is further magnified because ASCAP's membership agreements are "form" agreements (although they have evolved somewhat from decade-to-decade) that are substantially identical for each writer member, on the one hand, and

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stations and retransmitted by cable operators and satellite carriers works would be a subset of these 10 million works, although, as described, ASCAP cannot identify that subset with perfect accuracy.

[4] Royalty distributions for distant retransmissions of musical performances on local television are calculated and paid using local television performances as a "proxy."

for each publisher member, on the other hand.[5] And, for long-time members, many of those agreements have been subsequently renewed through form renewal agreements.

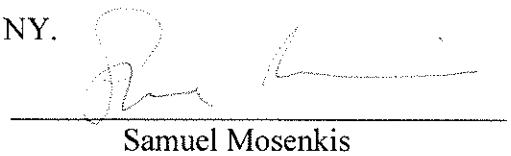
14. Given the burdensome nature of the MPAA's requests, and although it maintains that it is exempted from the preliminary claims resolution process, and despite that ASCAP makes available online a publicly-searchable database of ASCAP's repertory and membership, ASCAP has offered to produce the following subject to the appropriate provisions of a protective order entered in these proceedings:

a. Copies of ASCAP's claims filed for the distribution of cable and satellite funds for the years 2010, 2011, 2012, and 2013;
b. Materials regarding eligibility and application for membership with ASCAP;
c. A representative sample of ASCAP Writer Member and ASCAP Publisher Member form agreements;
d. A list of the ASCAP members who received local television distributions on a year-by-year basis for the years 2010, 2011, 2012, and 2013; and
e. An affidavit attaching the documents referenced above, providing explanatory information regarding royalty payment methods, and affirming that the referenced ASCAP members have signed and/or are required to sign ASCAP membership agreements.

ASCAP offered to produce these materials without prejudice to its position that they are not relevant. However, should the Judges order that Music produce discovery, ASCAP requests that discovery be limited to those materials set forth above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of May 2016, in New York, NY.



Samuel Mosenkis

[5] The current versions of the ASCAP Writer Agreement and ASCAP Publisher Agreement are available at: http://www.ascap.com/about/join/membership-agreement.aspx.

EXHIBIT C

Before the
COPYRIGHT ROYALTY JUDGES
Washington, DC

In re	)	
Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment Of Ineligible Claims	)	**Docket No. 19-CRB-0014-RM**

DECLARATION OF REID ALAN WALTZ

I, Reid Alan Waltz, hereby declare as follows, based on my personal knowledge:

1. I am over 18 years of age and am employed as Vice President and Counsel, Legal and Business Affairs, SESAC Performing Rights, LLC, as the successor in interest to SESAC, Inc. ("SESAC"). My office is located at 35 Music Square East, Nashville, TN 37203. I am authorized to submit this affidavit on behalf of SESAC in support of the Comments of Music Claimants BMI, ASCAP, and SESAC on Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claim (the "Music Comments").

2. SESAC, BMI, and ASCAP are historically known as the "Music Claimants" in cable and satellite royalty distribution proceedings before the Copyright Royalty Judges (the "Judges"). Music Claimants are the traditional claimants to the distribution of cable and satellite royalty funds in the Music Claimants category. SESAC, BMI, and ASCAP are performing rights organizations ("PROs") recognized by Section 101 of the Copyright Act that license the public performance rights to the music in their respective repertoires under Section 106(4) of the Copyright Act. SESAC represents over 42,500 composer, lyricist, songwriter, and publisher affiliates, with a repertoire of over 680,000 copyrighted musical works.

3. In Section IV of the Music Comments ("Identification of Invalid Claims"), certain burdens are set forth and explained that are anticipated to result should the Judges take certain actions in connection with the above-captioned Notice of Inquiry. In this regard, attached to this

Declaration as Exhibit 1 is a copy of the declaration of Scott Jungmichel of SESAC executed in May of 2016. I have personal knowledge regarding the subject matter and statements concerning the burdens that would be imposed on SESAC if the Judges were to require the PROs to prove each and every performance of an affiliate's musical works as set forth in Mr. Jungmichel's declaration, and those statements remain true today.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of March, 2020, in Nashville, Tennessee.

Reid Alan Waltz

EXHIBIT 1

In re **Distribution of Cable Royalty Funds**	**Consolidated Proceeding** **Docket No. 14-CRB-0010-CD (2010-13)**
In re **Distribution of Satellite Royalty Funds**	**Consolidated Proceeding** **Docket No. 14-CRB-0011-SD (2010-13)**

DECLARATION OF SCOTT JUNGMICHEL

I, Scott Jungmichel, hereby declare, under penalty of perjury, that the following statement is true and correct, and based upon my personal knowledge or the business records maintained by SESAC, Inc. and its subsidiaries ("SESAC") in the ordinary course of business.

1. I am over 18 years of age and am employed as Senior Vice President, Royalty Distribution & Research Services with SESAC. My office is located at 35 Music Square East, Nashville, TN 37203. I am authorized to submit this declaration on behalf of SESAC in support of the Music Claimants opposition to certain discovery requests that have been served on the Music Claimants in the above-captioned proceedings.

2. SESAC, the American Society of Composers, Authors and Publishers ("ASCAP"), and Broadcast Music, Inc. ("BMI") are collectively referred to as the "Music Claimants" in the above-captioned proceedings. SESAC, ASCAP and BMI are performing rights organizations ("PROs") recognized by Section 101 of the Copyright Act that represent and license the public performance rights under Section 106(4) of the Copyright Act in those musical works contained within their respective repertoires.

3. Music Claimants collectively represent in excess of one million songwriter, composer, lyricist, and music publisher members and affiliates with combined repertoires of tens

of millions of copyrighted musical works. The PROs are the traditional claimants to distributions of the cable and satellite royalty funds in the Music Claimant category.

4. SESAC represents the public performance rights in more than 680,000 musical works created and owned by in excess of 42,500 songwriters, composers, lyricists and music publishers.

5. All of SESAC's songwriter, composer, lyricist and music publisher affiliates are eligible to receive distributions of the cable and satellite royalty funds when their musical works are embodied within local television programming that is performed via distant signal cable and satellite retransmissions.

6. I am informed that the Motion Picture Association of America ("MPAA") is seeking discovery of certain information in connection with the above-captioned proceedings. I, therefore, have investigated the burden MPAA's discovery requests would impose upon SESAC.

7. SESAC obtains authority to represent songwriters, composers, lyricists and music publishers by entering into affiliation agreements which authorize SESAC to license the public performance rights in these affiliates' musical compositions on their behalf and to collect and distribute royalties in connection with that licensing activity. SESAC has entered into more than 42,500 such affiliation agreements, comprised of at least 255,000 pages in the aggregate. These agreements are stored on multiple, varying systems as a result of SESAC's many decades in operation. To locate, collect and produce this volume of documents would require substantial time, the devotion of considerable internal resources and the engagement of a third party IT consulting firm. Additionally, each agreement would need to be redacted to maintain the confidentiality of personal information of the individual rights holder, adding substantial time and manpower to prepare such redactions to the already-significant burden of location, collection

and production. Employees would need to be redirected from their ordinary functions, foreseeably resulting in internal backlogs and obstacles to meeting the needs of SESAC's affiliates. We estimate that collecting and, in particular, redacting the affiliation agreements as described above would take hundreds of man hours.

8. Also, because the statutory licenses in the above-captioned proceedings operate as blanket licenses, in effect granting cable operators and satellite carriers unlimited access to SESAC's entire repertoire, all musical works represented by SESAC are thus eligible to be licensed under the statutory licenses whether or not the works are actually performed. Moreover, SESAC may use cost effective surveys, samples or proxies to distribute cable and satellite funds. Accordingly, MPAA's demands for "program identity information for each claimant" and the identity of "each represented claimants' claim against each year's royalty fund" are unduly burdensome because this information is maintained in a manner intended to facilitate distribution under a blanket license as described below, not in a fashion intended to generate a map of claimants, compositions and programs.

9. SESAC distributes public performance royalties to those affiliates whose musical works are embodied within programming broadcast on local "over the air" television stations. In order to do so, SESAC purchases television program scheduling data for 1,782 local broadcast television stations from a third party data service provider representing approximately 15,600,000 hours of local television programming annually. SESAC then matches this scheduling data to reports prepared by the program supplier, called "cue sheets," which indicate the musical works used as well as the type and duration of each use in the programs. SESAC adds approximately 125,000 cue sheets which reflect the usage of approximately 2,500,000 music cues to its database each year. Finally, SESAC matches these cue sheets against its

musical works and affiliate databases to determine which affiliates will receive a distribution. The number of SESAC affiliates receiving such distributions between 2010 and 2013 averages approximately 1,275 per year.

10. To merely analyze the possibility of identifying every single musical work created or published by every single SESAC affiliate embodied in every single program transmitted on every single distant signal carried by every single cable operator or satellite carrier for each of the years 2010, 2011, 2012 and 2013 would require at least 80 man hours at a cost of between $50.00 and $150.00 per hour depending on the employee or professional involved. If, following that analysis, SESAC is able to design an appropriate data extraction and mapping protocol, considerable additional programming time and IT resources would be required to produce the requested information. This burden is further compounded by the fact that an individual program retransmitted by a cable operator or satellite carrier will often embody musical works represented by all three PROs and, in addition, an individual musical work may have multiple songwriters, composers, lyricists or music publishers each affiliated with a different PRO.

11. Given the burdensome nature of MPAA's discovery requests, I am informed that SESAC is prepared to produce the following subject to the appropriate provisions of a protective order entered in these proceedings and without prejudice to the Music Claimant's position that said materials are not relevant:

a. Copies of SESAC's claims filed for the distribution of cable and satellite funds for the years 2010, 2011, 2012 and 2013;

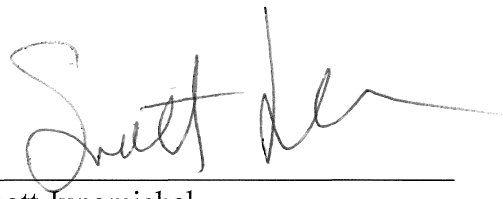
b. Policy materials regarding the process of affiliation with SESAC for public performance rights representation;

c. SESAC's standard form affiliation agreements;

d. A list of those SESAC affiliates who received local television distribution(s) for the years 2010, 2011, 2012 and 2013.

e. An affidavit attaching the documents referenced above, providing explanatory information regarding royalty payment methods, and affirming that SESAC affiliates have signed and/or are required to sign the affiliation agreements.

Executed this 18th day of May, 2016, in Nashville, TN.



Scott Jungmichel